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CV 13-51

U.S. DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE COMMISSION,

Plaintiff,

-against-

FREDRICK D. SCOTT,

Defendant

SCANLON, M.J.

13 Civ. _____ ()

COMPLAINT

Plaintiff Securities and Exchange Commission (“Commission”), for its Complaint against defendant Fredrick D. Scott (“Scott” or “Defendant”), alleges:

SUMMARY

1. This action involves a scheme to defraud investors conducted by the head of a Commission-registered investment adviser claiming to have \$3.7 billion in assets under management.

2. As founder, owner, and sole officer of ACI Capital Group, LLC (“ACI”), Scott registered ACI with the Commission as an investment adviser. Then, using his status as the owner of a registered investment adviser to bolster his credibility, Scott offered potential investors notes promising high rates of return beyond what could realistically be generated

through investment or use of the money. For example, one investor was promised a 25% rate of return over a 60-day loan period, equating to a 150% annualized rate of return.

3. However, once that investor lent ACI \$125,000, Scott immediately transferred the money from ACI's account to his own personal bank account, where Scott spent the money on a mixture of personal and business expenses. The investor was never paid back any of her money, despite repeated requests to Scott.

4. Unbeknownst to Scott's victims, ACI was not a viable investment advisory business, and Scott solicited monies from prospective investors while having no ability to pay the investors back as promised, and no intention of spending the investors' money on legitimate income-producing activities.

5. With respect to one investor who was fortunate enough to decide not to accept Scott's offer of a \$350,000 investment that would immediately yield a \$100,000 return, Scott's intent was singular: he was simply going to steal the investor's money.

6. ACI's business records reflect that Scott falsely characterized the nature of ACI's business in the Investment Adviser Registration Form that he filed with the Commission. And its bank records reflect that Scott used ACI's accounts, including monies deposited by ACI's victims, to fund his own personal expenses.

VIOLATIONS AND RELIEF SOUGHT

7. By virtue of the conduct alleged herein, Scott, directly or indirectly, engaged in acts, practices and courses of business that constitute violations of Section 17(a) of the Securities Act of 1933 ("Securities Act"), 15 U.S.C. § 77q(a), Section 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), 15 U.S.C. § 78j(b), Rule 10b-5, 17 C.F.R. § 240.10b-5 thereunder, and Section 207 of the Investment Advisers Act of 1940 ("Advisers Act"), 15

U.S.C. § 80b-7, and aided and abetted ACI's violation of Section 203(A) of the Advisers Act, 15 U.S.C. § 80b-3a.

8. The Commission brings this action pursuant to the authority conferred upon it by Section 20(b) of the Securities Act, 15 U.S.C. § 77t(b), Section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), and Section 209 of the Advisers Act, 15 U.S.C. § 80b-9. The Commission seeks a Final Judgment ordering permanent injunctive relief, an officer and director bar, disgorgement and prejudgment interest, a civil penalty, and such other relief as the Court may deem just and proper.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this action, pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and Section 214 of the Advisers Act, 15 U.S.C. § 80b-14.

10. Venue lies in this District pursuant to Section 22(a) of the Securities Act, 15 U.S.C. § 77v(a), Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and Section 214 of the Advisers Act, 15 U.S.C. § 80b-14. The Defendant, directly and indirectly, has made use of the means and instrumentalities of interstate commerce, or of the mails, in connection with the transactions, acts, practices and courses of business alleged herein, and certain of the transactions, acts, practices, and courses of conduct constituting violations of the federal securities laws occurred within this district.

DEFENDANT

11. **Fredrick D. Scott**, age 28, is currently incarcerated in Brooklyn, New York. Scott has never held any securities licenses. Scott is the founder and sole officer and member of ACI Capital Group, LLC, whose principal place of business was in New York before its

dissolution in April 2013. In July 2011, Scott caused ACI to file a Uniform Application for Investment Adviser Registration (“Form ADV”) with the Commission, which he updated and amended in subsequent filings through April 23, 2012. On April 1, 2013, Scott caused ACI to file a “Form ADV-W,” withdrawing ACI’s registration as an investment adviser.

FACTS

A. Scott and ACI’s Background

12. Starting in July 2011, Scott registered ACI as an investment adviser by filing the first of a series of Forms ADV.

13. Between July 11, 2011, and April 23, 2012, Scott had ACI file four separate amended Forms ADV.

14. Initially, Scott claimed in ACI’s Form ADV that ACI had \$350 million in assets under management. That number shrunk to \$100 million in ACI’s March 29, 2012, filing. However, less than one month later, on April 23, 2012, Scott had ACI file a Form ADV claiming to have custody of \$3.7 billion in assets. The April 23, 2012 Form ADV was the last Form ADV filed by ACI.

15. On ACI’s website, Scott touted ACI’s status as an SEC-registered investment adviser and repeated the claim that ACI had \$3.7 billion in assets.

16. On ACI’s website, Scott also described ACI’s current services as consisting of “Capital Raising Solutions, Acquisition Finance, Initial Public Offerings, Private Placements and Asset Management,” and described ACI as having an “investment platform” that is “a combination of global/multi-class Structured Financial Products that enable clients to manage their Liquidity, Credit, and Market risks.” The website also described Scott’s clients as including “Corporations, Financial Institutions, and Private Equity sponsors.”

17. Under the heading “ADVISORY SERVICES,” the ACI website stated that ACI “assist[s] our clients in obtaining resolutions to their most critical financial and strategic growth challenges,” and that ACI works with “clients with the [sic] annual revenues in the range of \$50 million to \$500 million.”

18. Not surprisingly for a purported manager of \$3.7 billion in assets, the ACI website spoke effusively about ACI’s skills:

“The success of ACI’s Private Client Services Group derives from the analytical discipline we incorporate in counseling our clients on their portfolios.”

“Our seasoned Financial Consultants and Trading Strategists have the information and experience to direct clients toward appropriate investment decisions. Even in volatile equity markets, we strive to find the stocks that rise above the fray and out-perform the rest.”

“We have successfully designed and implemented strategies that include hedging, borrowing, liquidating, and diversifying.”

19. In truth, however, ACI did not have a team of “Trading Strategists,” had never conducted a single stock purchase on behalf of a client, and had never engaged in any successful transactions of any kind on behalf of a client.

20. In fact, Scott had no clients, and the information contained in the website was false and misleading.

21. Nor did ACI have \$3.7 billion in assets.

B. Scott Caused ACI to File a False Form ADV

22. ACI’s April 23, 2012 Form ADV falsely represented that ACI held \$3.7 billion in assets under management. These assets under management supposedly consisted of purported contracts reflecting that various third parties had transferred to ACI illiquid foreign bonds and rights to real property in the Republic of Cameroon and Guadalajara, Mexico.

23. ACI purportedly acquired all of these assets in return for nothing more than shares in a newly-formed ACI subsidiary, even though Scott was valuing the assets at \$1.2 billion and the ACI subsidiary was a previously asset-less shell.

24. ,In fact, as Scott subsequently admitted to third parties, Scott had only “leased” the assets for two years and was required to share 50% of any financing revenues he obtained by virtue of his use of the assets.

25. The rest of the \$3.7 billion figure that Scott disclosed in ACI’s Form ADV filing was purportedly attributable to a Honduran mine he valued at \$2.6 billion.

26. In actuality, ACI never acquired that Honduran mine because the deal did not close.

27. Scott’s and ACI’s representation in the April 23, 2012 Form ADV that ACI had \$3.7 billion in assets was false.

C. Scott Used ACI to Conduct Fraudulent Schemes

28. Having established himself as a registered investment adviser, Scott embarked on a series of fraudulent schemes aimed at investors and at small businesses that needed financing.

29. In most of the schemes, Scott (on behalf of ACI) promised investors that ACI would provide multi-million dollar loans to persons seeking bank financing.

30. In one variation of the scheme, including on three separate instances in or around December 2011, December 2012 and January 2013, Scott told prospective borrowers that they needed to advance ACI some percentage of the loan amount in cash before receiving the loan. This type of scheme is commonly referred to as an “advance fee” scheme.

31. In other instances, including on three separate occasions in or around March 2012, December 2012, and March 2013, Scott sought money from investors, which he told them would

be used to fund “bridge loans” to third party borrowers pending ACI’s providing a longer term loans to those borrowers.

32. In those instances, Scott (on behalf of ACI) offered the investors a short-term promissory note or investment contract with a high rate of return, with the principal and interest to be repaid to the investors from the proceeds of the ACI long-term loan once the ACI loan closed.

33. At the time Scott was offering these notes, ACI did not have liquid assets sufficient to fund multi-million dollar loans and had no reasonable expectation of being able to do so.

34. At the time Scott was offering such notes to investors, neither Scott nor ACI had any reasonable expectation of having the ability to repay the investors.

35. One specific example of Scott’s fraudulent scheme is as follows: in March 2012, one investor sent ACI \$125,000 in return for a promissory note (labeled a “Guarantee of Principal and Interest”) guaranteeing that the investor would receive her principal plus 25% interest, for a total of \$156,250, within 60 days from the date of the note. The note provided that the payment shall be made by ACI “without protest and shall be free of any deductions, charges, fees or withholdings of any nature, presently or in the future.”

36. At the time ACI received the investor’s money, ACI had a total of \$350 in its bank accounts, and \$0 in its brokerage account. Its only other assets were the illiquid assets that ACI had purportedly purchased in return for shares in its subsidiary.

37. Within two days after having received the investor’s money, Scott wired it from an ACI account to his own personal bank account. From there, Scott spent the money on a

mixture of business and personal expenses, including air travel and hotels, over \$6,000 in dental expenses, and over \$4,400 at a bicycle and sporting goods store.

38. Neither Scott nor ACI ever repaid the investor despite repeated requests by the investor and their contractual obligation to do so.

39. In December 2012, Scott (on behalf of ACI) participated in offering a transaction to a different investor. In this proposed transaction, ACI agreed to lend a third party borrower \$6.65 million, but the borrower first needed to secure \$350,000 from the investor as a precondition to ACI's obligation to fund the borrower's \$6.65 million loan. In return for fronting the \$350,000, in what was described in documents as a "bridge loan," the investor was to receive the return of his principal plus \$100,000 at the closing of ACI's funding.

40. The mechanism by which the "bridge loan" was to be effected was as follows: The investor was to open an account at ACI, into which he would deposit the \$350,000. At that point ACI would wire the \$6.65 million loan into the investor's ACI account, and the investor would wire \$6.55 million of that money into the borrower's account, leaving a balance of \$450,000—his original \$350,000 plus \$100,000 return—in the investor's own account.

41. Although the investor never consummated the transaction, Scott did sign the bridge loan agreement for the deal on behalf of ACI. The agreement included an acknowledgement by ACI that at the end of the transaction the investor would have \$450,000 on account at ACI, and the investor could either withdraw his money or choose to leave it in the ACI account to avail himself of ACI's financial advisory services.

42. To induce the investor to complete the transaction and to engender his trust in Scott's ability and willingness to repay the \$350,000 plus the \$100,000 return, Scott told the investor that ACI was a Commission-registered investment adviser with over \$3.7 billion in cash

and “highly liquid” securities. At the time, ACI had no liquid securities and it had a negative cash balance in its bank accounts of more than \$350,000 because of a debt that it owed to a bank.

43. When asked what type of return Scott was getting for investors, Scott also told the prospective investor that ACI had earned a rate of return in the last year of 9.5%, even though it had not earned a penny on any investments.

44. At the time the prospective investor was considering whether to leave his money on account with ACI after the deal, Scott fabricated a story, telling the prospective investor he did not have to worry about losing his money with ACI because ACI focuses on conservative equities and fixed income investments. Scott further said that he always tells his clients that ACI is not comfortable taking large risks with other people’s money. In fact, ACI did not focus on anything as it had no legitimate assets under management. Nor did ACI have any “clients” to speak of.

45. The investor ultimately decided not to invest with Scott or ACI.

46. At the time of the offer to the investor, ACI did not have the ability to fund the underlying \$7 million loan to the third party, and Scott had no intention of repaying the investor the \$350,000 that the investor would have deposited into his ACI account before the \$7 million loan was funded.

47. In March 2013, another investor sent ACI \$250,000, with the understanding based on representations Scott made to a third party entity that the investor was going to be assisting the entity to obtain a \$5 million business loan from ACI.

48. Although the agreement entailed the investor having the third party pay her back the borrowed amount, plus \$20,000 in interest for the short-term use of her money, the deal was

structured so that the investor would—and did—wire her \$250,000 directly to ACI’s bank account.

49. At the time ACI received the investor’s \$250,000, it was Scott’s intent to steal the money.

50. The day before ACI received the investor’s \$250,000, notwithstanding Scott’s representation that ACI would be lending the entity \$5 million within the next few weeks, ACI’s bank account had approximately \$6,400 in it and ACI’s assets—to the extent Scott had any limited right to them—continued to be highly illiquid.

51. The next day, after the investor wired the funds into Scott’s ACI bank account, Scott began spending the investor’s money on a variety of business and personal expenses, including private school tuition for his children, medical bills, hotels, restaurants, and department store shopping.

52. By the end of March 2013, within just weeks of receiving it, Scott had spent all of the investor’s money and ACI had a negative bank account balance of \$72.24.

53. Scott then began attempting to extract additional money from the same investor, pitching her on a \$750,000 investment that Scott purported would be used by ACI to purchase a local New York City bank.

54. When the investor told Scott that she did not have \$750,000 to invest, Scott told the investor that the \$250,000 that she had already wired into the ACI account could be used to invest in the bank, instead of being used for closing on the third-party loan.

55. In early April 2013, Scott sent the investor a “Convertible Promissory Note Purchase Agreement,” signed by Scott, pursuant to which the investor’s \$250,000 would be lent to a new Scott entity, Fredrick D. Scott LLC (“FDS”), in return for a promissory note.

56. The agreement stated that the purpose of the loan was to provide Scott's company FDS with resources to conduct its business and assist in the acquisition of a "publicly traded FDIC Insured Financial Institution ('target')."

57. The agreement also contained a representation and warranty from Scott's company FDS that the proceeds from the sale of the note would not be used "for any personal, family or household purpose."

58. When Scott offered to sell the investor the \$250,000 note, he failed to tell the investor that he had already spent all of her money, including on personal expenses, and that his initial intent in receiving her money in the first place was to steal it.

59. When Scott offered to sell the investor the \$250,000 note, he also failed to tell the investor that he did not have sufficient assets to acquire a publicly-traded bank and that ACI was no longer a registered investment advisor, as it had withdrawn its registration the day before the note was transmitted to the investor.

60. Although Scott subsequently sent a bogus "indication of interest" letter to the same publicly-traded local New York bank on April 9, 2013, making a preliminary tender offer for all of the bank's outstanding shares and falsely representing that his takeover offer of approximately \$16 million would not require any third party financing because he had "sufficient cash and other assets currently available" to complete the acquisition, no such transaction ever occurred. Scott's statements about his ability to pay \$16 million in a takeover offer were flatly false as Scott and his entities did not have anywhere near the amount of money he would have needed in order to effectuate the transaction without third party financing.

61. Scott was arrested on June 4, 2013.

FIRST CLAIM FOR RELIEF
(Violations of Sections 17(a) of the Securities Act)

62. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 61 of this Complaint.

63. Scott, directly or indirectly, by use of the means or instruments of transportation or communication in interstate commerce, or of the mails, in the offer or sale of securities, acting with the requisite state of mind, (a) employed devices, schemes and artifices to defraud; (b) obtained money or property by means of untrue statements of material fact or omissions to state a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, practices, or a course of business which operated or would operate as a fraud or deceit upon purchasers.

64. By engaging in the conduct described above, Scott violated, and unless restrained and enjoined will again violate, Sections 17(a)(1), 17(a)(2), and 17(a)(3) of the Securities Act, 15 U.S.C. §§ 77q(a)(1), 77q(a)(2), and 77q(a)(3).

SECOND CLAIM FOR RELIEF
(Violations of Section 10(b) of the Exchange Act and Rule 10b-5)

65. The Commission realleges and incorporates by reference herein each and every allegation contained in paragraphs 1 through 61 of this Complaint.

66. Scott, directly or indirectly, by use of the means or instruments of transportation or communication in interstate commerce, or of the mails, in connection with the purchase or sale of securities, knowingly or recklessly: (a) employed devices, schemes and artifices to defraud; (b) made untrue statements of material fact, or omitted to state material facts necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; and (c) engaged in transactions, acts, practices and courses of business which operated or would have operated as a fraud or deceit upon any person.

67. By reason of the foregoing, Scott violated, and unless restrained and enjoined will again violate, Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b) and Rule 10b-5, 17 C.F.R. § 140.10b-5, promulgated thereunder.

THIRD CLAIM FOR RELIEF
(Aiding and Abetting Violation of Section 203(A) of the Advisers Act)

68. The Commission reallages and incorporates by reference herein each and every allegation contained in paragraphs 1 through 61 of this Complaint.

69. ACI maintained its principal office and place of business within the State of New York, and had assets under management of less than \$25,000,000. ACI was not otherwise exempt from the provisions of Section 203A of the Advisers Act, 15 U.S.C. § 80b-3a. ACI was ineligible to register as a federal investment adviser and was required to register with the appropriate state entity instead.

70. Scott, acting with the requisite state of mind, caused ACI to register with the Commission as an investment adviser when it was ineligible to do so.

71. By reason of the foregoing, Scott aided and abetted a violation of, and unless restrained and enjoined will again aid and abet a violation of or violate Section 203A of Advisers Act, 15 U.S.C. §§ 80b-3a.

FOURTH CLAIM FOR RELIEF
(Violation of Section 207 of the Advisers Act)

72. The Commission reallages and incorporates by reference herein each and every allegation contained in paragraphs 1 through 61 of the Complaint.

73. Scott, by use of the means or instruments of transportation or communication in interstate commerce, or of the mails, acting with the requisite state of mind, willfully made untrue statements of fact and omitted to state material facts required to be stated in a registration application filed with the Commission.

74. By reason of the foregoing, Scott violated, and unless restrained and enjoined will again violate, Section 207 of the Advisers Act, 15 U.S.C. § 80b-7.

PRAYER FOR RELIEF

WHEREFORE, the Commission respectfully requests that the Court enter a final judgment against the Defendant granting the following relief:

I.

Finding that the Defendant violated the securities laws and rules promulgated thereunder as alleged herein.

II.

Permanently, restraining and enjoining the Defendant, his agents, servants, employees and attorneys and all persons in active concert or participation with him, who receive actual notice of the injunction by personal service or otherwise, and each of them, from committing future violations of Section 17(a) of the Securities Act, 15 U.S.C. § 77q(a); Section 10(b) of the Exchange Act, 15 U.S.C. § 78j(b), Rule 10b-5, 17 C.F.R. § 240.10b-5 thereunder; and Section 207 of the Advisers Act, 15 U.S.C. § 80b-7; and from committing future aiding and abetting of and/or violations of Section 203(A) of the Advisers Act, 15 U.S.C. § 80b-3a..

III.

Prohibiting the Defendant from acting as an officer or director of any issuer that has a class of securities registered pursuant to Section 12 of the Exchange Act, 15 U.S.C. § 78l, or that is required to file reports pursuant to Section 15(d) of the Exchange Act, 15 U.S.C. § 78o(d).

IV.

Directing the Defendant to disgorge his ill-gotten gains, plus prejudgment interest, and such other and further amount as the Court may find appropriate.

V.

Directing the Defendant to pay civil money penalties pursuant to Section 20(d) of the Securities Act, 15 U.S.C. § 77t(d), Section 21(d)(3) of the Exchange Act, 15 U.S.C. § 78u(d)(3) and Section 209(e) of the Advisers Act, 15 U.S.C. § 80b-9.

VI.

Such other and further relief as to this Court deems just and proper.

Dated: New York, New York
September 13, 2013

By: 

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